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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re S.S. et al., Persons Coming Under the  
Juvenile Court Law.

SAN BERNARDINO COUNTY  
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

B.S. et al.,

Defendants and Appellants.

E047674

(Super.Ct.No. J210904)

OPINION

APPEAL from the Superior Court of San Bernardino County. Wilfred J.  
Schneider, Jr., Judge. Affirmed.

Michelle L. Jarvis, under appointment by the Court of Appeal, for Defendant and  
Appellant B.S.

Robert McLaughlin, under appointment by the Court of Appeal, for Defendant and  
Appellant S.D.

Ruth E. Stringer, County Counsel, and Danielle E. Wuchenich, Deputy County Counsel, for Plaintiff and Respondent.

Michael D. Randall, under appointment by the Court of Appeal, for Minors.

Appellants B.S. (mother) and S.D. (father) are the parents of S.S. and S.D. (the children). Their parental rights were terminated and they now contend the juvenile court erred in failing to apply the beneficial relationship exception to the termination of parental rights. (Welf. & Inst. Code,<sup>1</sup> § 366.26, subd. (c)(1)(B)(i).) We affirm.<sup>2</sup>

### FACTUAL AND PROCEDURAL BACKGROUND

On October 6, 2006, a social worker from the San Bernardino County Children and Family Services (CFS) received an immediate response referral to the hospital where mother had just given birth to S.S. The hospital social worker stated that both mother and S.S. had tested positive for amphetamines and that mother had a history of alcohol abuse. Nonetheless, S.S. appeared to be “very healthy.” Mother admitted having an alcohol problem and domestic violence issues. The social worker determined that S.S. could return home with mother if the maternal grandmother would supervise her closely, but the case would remain open. Mother was given referrals for services.

On October 17, 2006, the social worker received another referral alleging that mother had been arrested on October 15 for being drunk in public and fighting with her

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<sup>1</sup> All further statutory references will be to the Welfare and Institutions Code unless otherwise noted.

<sup>2</sup> Counsel for the children filed a letter brief on June 25, 2009, asking us to affirm the court’s orders.

mother. According to the maternal grandmother, mother got drunk and wanted to leave the house with S.S. When the maternal grandmother tried to stop mother, she (mother) became physical with her. The maternal grandmother called the police, and mother was arrested but released the next day. The social worker took S.S. into protective custody.

On October 19, 2006, the social worker filed a section 300 petition on behalf of S.S. The petition alleged that S.S. came within section 300, subdivisions (b) (failure to protect) and (g) (no provision for support), and included the following allegations:

1) mother and father (who was an alleged father), engaged in domestic violence while the child was in utero; 2) mother engaged in a domestic dispute with the maternal grandmother in the presence of the child, thus placing the child at risk of harm; 3) mother and father had problems with alcohol and substance abuse.

At the detention hearing, mother indicated that aside from father, there were two other possible fathers. The court ordered paternity testing. The court detained S.S. in foster care.

#### *Jurisdiction/disposition*

The social worker filed a jurisdiction/disposition report on November 7, 2006, recommending that mother and father (the parents) be provided with reunification services. The results of the paternity test were not yet available. Mother stated that she and father were in a relationship for 10 months, and she got pregnant after the first two months. However, she claimed they were no longer in a relationship. At the time of the writing of the report, mother was 23 years old, and father was 42 years old.

The court held a jurisdictional hearing on November 13, 2006. Father's paternity test revealed that he was the father. At a continued hearing on December 5, 2006, the court found that S.S. came within section 300, subdivision (b), and declared her a dependent of the court. The court also found father to be a presumed father. The court ordered the parents to participate in services. Both of their case plans required them to complete a parenting education program, attend anger management classes, and submit to random drug testing. Mother's case plan additionally required her to attend an inpatient substance abuse program and a 12-step program. Father's case plan additionally required him to attend an outpatient substance abuse treatment program.

The court also found that mother had made sufficient progress alleviating the problems that led to removal of the child and allowed S.S. to be returned to her custody under the court's supervision. The return to mother's custody was conditioned on mother remaining in the inpatient treatment program, graduating, and continuing to test clean and participate in her services. S.S. was placed with mother at her inpatient treatment facility.

#### *Six-month Status Review*

The social worker filed a six-month status review report on May 24, 2007, recommending that the parents' reunification services be continued. Mother was living in a sober living home and shared a room with S.S. and another resident. Mother was unemployed. She remained in a relationship with father despite their domestic violence history. Mother demonstrated poor impulse control and threw temper tantrums when she did not get her way.

Father was unemployed as well. He also had problems controlling his anger and had poor impulse control. He visited S.S. once or twice per week and was affectionate and attentive.

A six-month status review hearing was held on June 18, 2007. The court ordered continued family maintenance services for mother and reunification services for father.

#### *Section 387 Petition*

On August 20, 2007, CFS filed a section 387 petition after it was reported that the parents drove to the home of the maternal grandfather while intoxicated. They had S.S. in the car with them. When they arrived at the home, they continued to drink and engage in verbal and physical altercations in the presence of S.S. Mother admitted she and father drank beer and engaged in domestic violence while S.S. was in their care. The next day, the court detained S.S.

#### *Jurisdiction/disposition*

On September 7, 2007, the social worker filed a jurisdiction/disposition report recommending that the parents be provided with reunification services. The social worker reported that both parents had participated in various treatment programs but had not benefitted from them, as shown by their continued involvement in substance abuse and domestic violence. Furthermore, mother was pregnant again. Since S.S.'s removal on August 16, 2007, the parents visited S.S. on August 18 from 1:00 p.m. to 8:00 p.m. The visit went well. They also had a two-hour visit on September 1.

At the hearing on September 11, 2007, the court found that S.S. came within section 387. The court ordered that S.S. remain a dependent of the court and ordered the parents to participate in reunification services. The court placed S.S. with the paternal grandparents.

#### *12-month Status Review*

The social worker filed a 12-month status review report on November 16, 2007, and recommended that a section 366.26 hearing be set to establish a permanent plan of adoption. The social worker also stated that on October 13, 2007, S.S. was placed with her paternal uncle and his wife and family.

Furthermore, the social worker reported that mother's baby was due around January 17, 2007. She believed father was the father of this baby.

As to visitation, since the September 11, 2007, removal of the child, mother had four visits with S.S. and father had five (most of the visits took place with mother and father together). The visits were appropriate, as no problems were reported. The social worker noted that the parents obviously loved S.S., but they failed to demonstrate the ability to place her needs before their own, as shown by their fighting and drinking around her.

The social worker filed an addendum report on December 4, 2007, to report the findings of psychological evaluations, which were completed on November 30, 2007. Mother was diagnosed with bipolar disorder, and the psychologist noted her history of alcohol dependence, amphetamine abuse, child endangerment, domestic violence, and

that she had been a victim of physical abuse as an adult. Father was diagnosed with alcohol abuse and posttraumatic stress disorder, and the psychologist noted his history of child endangerment and domestic violence. The psychologist opined that father was not stable financially or psychologically.

At the 12-month review hearing on December 10, 2007, the parents set the matter contested. The court continued the matter for mediation and a pretrial settlement conference.

*Section 300 Petition—S.D.*

Mother gave birth to her son, S.D., on January 10, 2008. CFS filed a section 300 petition on January 16, alleging that the child came under subdivisions (b) (failure to protect) and (j) (abuse of sibling). The court temporarily detained S.D. the next day, and the parents set the matter contested. At the contested hearing on January 28, the court detained S.D. in a confidential foster home and ordered paternity testing.

*Jurisdiction/disposition—S.D.*

The social worker filed a jurisdiction/disposition report on February 14, 2008, recommending that S.D. remain in confidential foster care. The social worker noted that the parents had visited with S.D. once or twice per week since his removal and that there had been no problems with the visits.

The jurisdiction/disposition hearing was held on February 19, 2008. The court found that S.D. came within section 300, subdivisions (b) and (j), and declared him a dependent of the court. The court also found that father was the presumed father of S.D.

(The subsequent paternity test results show that father is the biological father of S.D.)

The court ordered reunification services for the parents, as well as supervised visitation.

*Contested 12-month Review Hearing—S.S.*

The contested 12-month hearing was held on February 28, 2008. Mother testified that she had supervised visits with S.S. two hours per week. During visits, mother played with S.S., and S.S. called her “mama.” Mother also said that she recently had a full day visit with S.S., and that she and father took full care of her.

Social worker Leonie Walker, who was assigned to S.S.’s case, also testified. She opined that mother was an excellent mother with S.S. on a short-term basis. Mother was concerned for S.S.’s well-being and was attentive. Walker opined that mother and S.S. were bonded with each other. However, Walker was concerned about the long term. S.S. was placed with her paternal cousin, C.H., on January 7, 2008, and was doing very well in the home.

Father also testified. His current visitation was two hours per week. However, he said he had a longer visit recently, and he fed S.S., bathed her and put her to bed. He said S.S. called him “Daddy.”

After hearing all the testimony, the court ordered reunification services to continue to the 18-month review date, which was six weeks away.

*18-month Status Review—S.S.*

The social worker filed an 18-month status report on April 4, 2008. She reported the parents were now participating in services and seemed to be making progress. They



both agreed to a Family Group Decision Making Meeting (FGDM) to develop a plan that would ensure the protection of S.S. should she reunify with the parents. An FGDM meeting was scheduled for April 13, and if a plan could be developed, the social worker would recommend that S.S. be returned to mother on a family maintenance plan and terminate services to father. Otherwise, the social worker would recommend setting a section 366.26 hearing to establish adoption as the permanent plan. C.H. was very interested in adopting the children.

As to visitation, the social worker reported that mother and father had been visiting S.S. regularly with no reported concerns.

The social worker filed an addendum report after the FGDM was held, recommending that S.S. be returned to mother on a family maintenance plan and that father's services be terminated. At the 18-month hearing on April 17, 2008, the court returned S.S. to mother on family maintenance and terminated father's services. S.S. was to live with mother at her sober living facility.

However, on July 2, 2008, mother was terminated from her sober living facility due to an altercation between her and another resident. Mother and S.S. then moved in with the maternal grandfather, with the social worker's approval.

*Sections 387 and 342 Petition—S.S.*

On August 7, 2008, CFS filed a petition under sections 387 and 342, alleging that mother was unable to adequately care for S.S. because of her emotional instability and unstable lifestyle. Father reported that mother was drunk on August 1. Mother admitted

to the social worker that she had a drink to “calm her nerves.” She broke down in tears and told the social worker that because of her financial and emotional instability, she could not care for the children and wanted them placed in legal guardianship with C.H.

The court held a detention hearing on August 8, 2008, and detained S.S. in the home of C.H. The court ordered weekly unsupervised visitation for father and authorized overnight visits. It ordered weekly, supervised visitation for mother.

*Six-month Status Review—S.D.*

On August 8, 2008, the social worker filed a status review report on S.D., recommending that a section 366.26 hearing be set to establish a permanent plan of guardianship. She reported that both parents had participated in various services but had not benefitted, as evidenced by mother’s continued use of alcohol and the parents arguing and fighting around the children. Furthermore, both parents were unable or unwilling to obtain and/or maintain employment and stable or adequate housing for the children. In addition, mother was emotionally unstable and required medication to stabilize her moods.

As to visitation, the social worker reported that both parents had been having unsupervised visits regularly from June 1 to August 1, 2008. Mother was having overnight and weekend visits, and no major problems were reported. However, mother was initially struggling to provide diapers and formula for S.D. and had to ask the foster parents to provide for these needs.

Both parents failed to appear at the six-month review hearing on August 19, 2008. Their counsel set the matter contested, and the court continued the matter.

*Jurisdiction/disposition—S.S.*

The social worker filed a jurisdiction/disposition report on August 26, 2008, and recommended that mother's services be terminated and a section 366.26 hearing be set to establish a permanent plan of guardianship for S.S. The social worker reported that mother called on August 22 and told her that she and father had gotten drunk together two days prior and had a domestic violence dispute. Mother said she needed reconstructive surgery on her face.

Additionally, the social worker noted that S.S. appeared to be very bonded with both parents and looked to them for love and affection. However, the social worker opined that mother and father were not capable of raising S.S. on their own. They were both unable to maintain adequate housing or employment.

The jurisdiction/disposition hearing was held on August 28, 2008, and both parents submitted on the recommendation of guardianship with C.H. The court found that S.S. came within sections 300 and 387, noted the parents had received "lots of services," but were still having problems. The court stated that S.S. should be freed for adoption. At counsel's request, the court set the disposition for further hearing.

*Presettlement Conference Hearing—S.D.*

At a presettlement conference hearing for S.D. on September 2, 2008, mother and father submitted on the recommendation to terminate services and set a section 366.26

hearing. The court followed the recommendation and set a section 366.26 hearing for December 30.

Then, at a hearing on September 4, 2008, the court ordered supervised visitation for father with S.D., and set the section 366.26 hearing for S.S. for December 30 as well.

*Section 366.26—S.S. and S.D.*

The social worker filed a section 366.26 report regarding both children on December 19, 2008, and recommended termination of parental rights and adoption as the permanent plan. The children were now both living with C.H. They were well adjusted to the home and very attached to her.

The social worker reported that at visits, the parents were appropriate toward the children, but were often argumentative and accusatory with the adults who were supervising the visits. The arguments tended to cause a lot of stress for the children to witness. Moreover, the social worker reported that both parents had not visited the children regularly. Mother had not seen the children since September 15, 2008, due to lack of transportation and being unemployed. Father's last visit was on October 4, 2008, and it reportedly "did not go well." Father attributed his lack of visits to travelling out of state as a truck driver. Both parents called S.S., who was now 26 months old, on the telephone. Until recently, S.S. would talk to mother, but she now passed the telephone to the caretaker within 10 seconds. S.S. continued to talk to father a little longer than with mother.

The social worker assessed the children for adoption and described both of them as healthy, happy, and loveable. The social worker reported that C.H. was meeting all of their needs, and the children were thriving in her home. She wanted to adopt them and provide them with a safe, happy, and secure home. The social worker recommended adoption by C.H., since the children were emotionally attached to her and referred to her as their mother.

A contested section 366.26 hearing was held on February 9, 2009. The social worker testified that since August 5, 2008, to the time of the hearing, mother and father had only had two visits with the children. Mother's visits were on September 15, 2008, and January 23, 2009, and father's visits were on October 4, 2008, and January 23, 2009. The social worker testified that at the January 23, 2009, visit, father was very good with the children. He fed and changed them, and S.S. did not want him to leave. The social worker also opined that mother seemed bonded to her children. However, the social worker's professional opinion was that, if the children were adopted and never visited with the parents again, they would not be hurt; "[t]hey would be okay." The social worker agreed that neither one of the children would have significant emotional problems or trauma if they never saw their father again.

Father testified that he often had visits with S.S. for five to eight hours at a time, and that he took care of her by changing her diapers, feeding her, bathing her, and taking her for walks. He said that he loved her, and she loved him and knew he was her father. Father said he felt close to both children.

Mother also testified. She admitted she had visited S.S. only twice since she was last removed. Mother said she did not have a car or a job, and that she had an unstable living situation. She said that father took her to see the children for the two visits she had. She stated there was no reason why she had not taken a bus to visit the children. When asked why she thought the children would benefit from maintaining a relationship with her, she said she felt that no one could love them the way she did.

After hearing all the testimony, the court commented that in order for the beneficial parental relationship exception to adoption to apply, the parents were required to show frequent and loving contact, but something more than an emotional bond and pleasant visits with incidental benefits to the children. The court had no doubt that the parents loved the children but noted that the parents had failed to “move[] one step closer” to being the parents they should be. The court thus found that the parental bond did not outweigh the children’s need for stability and permanence. The court followed the social worker’s recommendation, terminated parental rights, and ordered adoption as the permanent plan.

### ANALYSIS

#### The Beneficial Parental Relationship Exception Did Not Apply

Mother and father both contend the court erred in not applying the beneficial parental relationship exception under section 366.26, subdivision (c)(1)(B(i). We disagree.

At a section 366.26 hearing, the court determines a permanent plan of care for a dependent child. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 50.) Adoption is the permanent plan preferred by the Legislature in California. (*In re Celine R.* (2003) 31 Cal.4th 45, 53.) If the court finds that a child may not be returned to his or her parents and is likely to be adopted, it must select adoption as the permanent plan, unless it finds a compelling reason for determining that termination of parental rights would be detrimental to the child under one of the exceptions set forth in section 366.26, subdivision (c)(1). One such exception is the beneficial parental relationship exception set forth in section 366.26, subdivision (c)(1)(B)(i). (*In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1206.) This exception applies when the parents “have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) The phrase “benefit from continuing the relationship” refers to a parent/child relationship that “promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575 (*Autumn H.*)) It is the parent’s burden to show the beneficial

parental relationship exception applies. (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1345.)

*A. The Parents Failed to Maintain Regular Visitation*

Mother claims the evidence showed that she consistently visited the children “throughout most of the case.” Mother is correct that she did visit the children during *most* of the dependency. However, she did not maintain regular visitation throughout. Significantly, she failed to regularly visit the children during the last six months of the dependency. The record shows that S.S. was placed with mother twice on family maintenance services, for a number of months, but that the child had to be removed from mother’s care because mother was drinking alcohol and engaging in domestic violence with father. After S.S. was removed the second time on August 5, 2008, mother did not visit S.S. again until September 15. She had another visit on January 23, 2009. As to S.D., he was taken into custody right after he was born and thus never lived with mother. Although mother visited S.D. regularly at first, she only had two visits with him from August 2008 to February 2009. In other words, during the six months immediately preceding the section 366.26 hearing, mother visited the children only twice. She did not have a car but admitted there was no reason why she did not take the bus to visit them. Although mother asserts that she consistently called the children on the telephone, a few seconds on the telephone with children one and two years old hardly substituted for visitation. S.S. stayed on the telephone with mother only for a few seconds, and S.D. was barely verbal.



Father similarly claims that he consistently visited with the children throughout the course of the dependency. While the evidence shows that father visited the children regularly at first—and sometimes for long periods of time—it also shows that from August 5, 2008, to the time of the hearing on February 9, 2009, he had only two visits. Father’s visits were on October 4, 2008, and January 23, 2009. The social worker reported the visit on October 4, 2008, “did not go well.” Father admits that his visits decreased when the children were placed with C.H. in August 2008. He attributed his lack of visits to “work issues” and the distance to C.H.’s home. However, since father visited the children only twice during the last six months of the dependency, he failed to show that he maintained regulation visitation throughout the dependency.

*B. The Parents Failed to Show the Children Would Benefit from Continuing the Relationships*

Mother contends the children had “a substantial, positive, emotional attachment” to her. In support of her claim, she asserts merely that the children knew who their mother was and loved her, the reports on her visits were positive, and the social worker even testified that mother appeared to be bonded to her children. When asked at the section 366.26 hearing why she thought the children would benefit from maintaining a relationship with her, mother simply said that she felt no one could love them the way she did. The court acknowledged that the parents loved their children and that the visits were appropriate. However, mother’s interactions with the children do not even begin to demonstrate that her relationship with them promoted their well-being “to such a degree

as to outweigh the well-being the child[ren] would gain in a permanent home with new, adoptive parents.” (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) Mother has proffered no evidence to support a finding that the children had a “substantial, positive emotional attachment [with her] such that [they] would be greatly harmed” if the relationship was severed. (*Ibid.*) To the contrary, the social worker opined that if the children were adopted and never visited with the parents again, the children would not be hurt or affected by it.

Father also claims he developed a close and bonded relationship with the children during their visits. The record does show, as father asserts, that he tended to the children’s needs during visits, and that he loved them. However, even he admits there is no evidence in the record that the children had a “primary attachment” to him. Nonetheless, he concludes that his “parental bond with [them] and the benefit [they] stand to receive if their relationship with [him] is maintained outweighs the benefit they stand to receive in the event they are adopted.” Father, like mother, has proffered no evidence to support a finding that the children had a “substantial, positive emotional attachment [with her] such that [they] would be greatly harmed” if the relationship were severed. (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) To the contrary, the social worker opined that, in her professional opinion, the children would be fine if they were adopted, and they would not have any significant emotional problems or trauma if they never saw father again.

Moreover, the record shows the children were thriving in their prospective adoptive home. The social worker testified that C.H. was motherly, nurturing, and loving with the children. C.H. met all their needs, and they were bonded to her and called her “Mamma.” She was willing and able to provide a permanent, loving, and stable home for the children.

We conclude that the beneficial parental relationship exception under section 366.26, subdivision (c)(1)(B)(i) did not apply here.

DISPOSITION

The order is affirmed.

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HOLLENHORST

J.

We concur:

RAMIREZ

P.J.

MILLER

J.